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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Ada Co. Case No. CR01-16-27824
Plaintiff-Appellant,)	Supreme Court No. 44935
)	
v.)	
)	
BRIAN McGRAW,)	
)	
Defendant-Respondent.)	
_____)	
STATE OF IDAHO,)	
)	Ada Co. Case No. CR01-16-25070
Plaintiff-Appellant,)	Supreme Court No. 44942
)	
v.)	
)	
LACEY KILLEEN,)	
)	
Defendant-Respondent.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE MICHAEL J. REARDON
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEYS FOR
PLAINTIFF-APPELLANT**

ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712

ROBYN FYFFE
Fyffe Law
800 W. Main St., Ste. 1460
P. O. Box 5681
Boise, Idaho 83705
(208) 338-5231

**ATTORNEYS FOR
DEFENDANTS-RESPONDENTS**

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's orders granting Lacey Killeen's and Brian McGraw's motions to suppress evidence.

Statement Of The Facts And Course Of The Proceedings

The state charged Killeen and McGraw with possession of methamphetamine. (#44942 R., pp. 37-38; #44935 R., pp. 33-34.) Their cases were consolidated. (#44942 R., pp. 49-52; #44935 R., pp. 44-47.) Killeen and McGraw filed motions to suppress evidence from an allegedly illegal traffic stop. (#44942 R., pp. 62-63; #44935 R., p. 59.) Specifically, McGraw argued that the officer who conducted the initial stop, Officer Green, "abandoned writing the citation" by "delegat[ing]" the task of writing the citation to another officer, Officer Plaisted, and that the stop itself was "pretextual." (#44935 R., p. 64.) Killeen argued that the police extended the stop by inquiring about the probation or parole status of the driver and passenger, asking whether the occupants of the car possessed anything illegal, and by asking for consent to search the car. (#44942 R., p. 69.) The district court rejected the claim the stop was pretextual because the police had an "objective reason to make a stop." (Tr., p. 69, L. 21 – p. 70, L. 6.) The district court concluded, however, that suppression was required because "Officer Green himself actually did abandon the purpose of the stop when he handed the ticket book off to Officer Plaisted." (Tr., p. 70, L. 7 – p. 72, L. 11.) The court also noted that Officer Plaisted took time to turn off the flashing lights on a patrol car and was likely keeping alert about his surroundings

while writing the ticket. (Tr., p. 70, L. 18 – p. 71, L. 6.) Based on the suppression of evidence, and the state's representation it lacked sufficient evidence to proceed, Killeen and McGraw orally moved to dismiss the cases, and the district court orally granted the motion. (Tr., p. 72, L. 12 – p. 73, L. 13.)

The state filed notices of appeal timely from the filing of the district court's written orders granting the motions to suppress evidence. (#44942 R., pp. 93-98; #44935 R., pp. 95-102.)

ISSUE

Did the district court err in concluding that the initial officer's action of handing the ticket book to a second officer, combined with the second officer's actions of turning off the flashing lights on a patrol car and paying attention to his surroundings while writing the ticket, constituted an abandonment of the traffic stop?

ARGUMENT

The District Court Erred By Finding An Abandonment Of The Traffic Stop

A. Introduction

Officer Green pulled over a car for an improper signal of a lane change and failure to maintain lanes. (Tr., p. 9, L. 15 – p. 11, L. 5.) The driver of the car was Lacey Killeen and the passenger in the car was Brian McGraw. (Tr., p. 13, Ls. 16-22.) After learning that McGraw was on parole on a marijuana delivery conviction and running a standard records check, Officer Green had Killeen exit the car. (Tr., p. 12, Ls. 17-25; p. 14, L. 4 – p. 15, L. 5.) As Officer Green started filling out the citation, Officer Plaisted, who had arrived on the scene, removed McGraw from the car and had him sit next to Killeen at the side of the road. (Tr., p. 15, Ls. 6-24; p. 45, L. 9 – p. 47, L. 13; State's Exhibit 2 (Plaisted-1, 1:45-2:30).) Officer Green then handed off the citation book to Officer Plaisted, who continued writing the citation. (Tr., p. 15, L. 25 – p. 16, L. 5; p. 47, L. 14 – p. 48, L. 7; State's Exhibit 2 (Plaisted-1, 2:25-3:20).) Officer Plaisted also turned off the flashing lights on Green's police car so they would not be a distraction to traffic. (Tr., p. 52, Ls. 9 – p. 54, L. 6; State's Exhibit 2 (Plaisted-1, 2:20-3:00).) After handing the citation book to Officer Plaisted, Officer Green retrieved his canine, which quickly alerted to the presence of controlled substances in Killeen's car. (Tr., p. 16, Ls. 6-17; p. 48, Ls. 8-14; State's Exhibit 2 (Plaisted-1, 3:20-4:37).)

The district court concluded that Officer Green's act of handing off the citation book, in conjunction with Officer Plaisted's acts of walking around the police car, pausing to turn off the flashing lights, and "likely covering Officer

Green at the same time” he was “engaging Ms. Killeen in an apparent effort to complete the citation,” constituted an abandonment of the purposes of the traffic stop. (Tr., p. 70, L. 11 – p. 71, L. 7.) Application of the correct legal standards to the facts of this case shows that the underlying purpose of the traffic stop—investigating and issuing a citation for a traffic violation—was not abandoned, and therefore the stop was not unconstitutionally expanded.

B. Standard Of Review

“When this Court reviews an order granting or denying a motion to suppress, it accepts the trial court’s factual findings unless they are clearly erroneous.” State v. Zueger, 143 Idaho 647, 649, 152 P.3d 8, 10 (2006).

C. Handing Off The Citation Book So The Citation Could Be Completed Was The Exact Opposite Of Abandoning The Purpose Of The Traffic Stop

“Because a routine traffic stop is normally limited in scope and of short duration, it is more analogous to an investigative detention than a custodial arrest and therefore is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).” State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). “Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws.” State v. Roe, 140 Idaho 176, 180, 90 P.3d 926, 930 (Ct. App. 2004). A “drug dog sniff is not a search and therefore may be done during a traffic stop without reasonable suspicion of drug activity.” State v. Aguirre,

141 Idaho 560, 563, 112 P.3d 848, 851 (Ct. App. 2005) (citing Illinois v. Caballes, 543 U.S. 405 (2005)).

“An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop.” State v. Ramirez, 145 Idaho 886, 889, 187 P.3d 1261, 1264 (Ct. App. 2008). “Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose.” Rodriguez v. United States, ___ U.S. ___, 135 S.Ct. 1609, 1616 (2015) (internal quotes, brackets and citations omitted). Addressing the infraction includes “address[ing] the traffic violation that warranted the stop” and “attend[ing] to related safety concerns.” Id. “The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions.” State v. Linze, 161 Idaho 605, ___, 389 P.3d 150, 154 (2016).

Handing the citation book to another officer so the second officer could complete filling out the ticket was not an abandonment of the purpose of the stop. It was exactly the opposite of abandoning the purpose of the stop. Nor did turning off the flashing lights to avoid possibly distracting other traffic or monitoring McGraw and Killeen while writing out the citation constitute an abandonment of the traffic stop. Because the officers cumulatively continued to diligently pursue the purpose of the stop—writing a citation for the traffic

infractions while attending to related safety concerns—they did not violate Killeen’s and McGraw’s Fourth Amendment rights.

The district court concluded that handing the citation book to a second officer, combined, perhaps, with the actions of the second officer of turning off flashing lights and monitoring McGraw and Killeen while writing the citation, constituted an abandonment of the purposes of the stop. Application of the law to the facts of this case shows that officers did pursue, rather than abandon, the purposes of the stop and did not violate Killeen’s or McGraw’s constitutional rights.

CONCLUSION

The state respectfully requests this Court to reverse the district court’s orders suppressing evidence resulting from the traffic stop and its oral order dismissing these cases.

DATED this 7th day of August, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of August, 2017, served a true and correct copy of the foregoing BRIEF OF APPELLANT by emailing an electronic copy to:

ERIC D. FREDERICKSEN
STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

ROBYN FYFFE
FYFFE LAW

at the following email addresses: robyn@fyffelaw.com and robynfyffe@icloud.com.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd